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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 03 250 54707 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

S/ Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability and as a member of the professions holding an advanced degree. The petitioner describes himself as an "Entrepreneur, Consultant, Lecturer" who seeks employment as a "Chief Technology Officer & CEO" in the field of information security. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

In denying the petition, the director stated that the petitioner "does not have an advanced degree in information technology, or a related field." The director does not elaborate on whether or not this disqualifies the petitioner from the classification sought. While the petitioner's advanced degree is in Training and Human Resources Management, rather than a field related to computer security, the record indicates that the petitioner does have a relevant bachelor's degree and over five years of progressive post-baccalaureate experience in the field, which is equivalent to an advanced degree pursuant to 8 C.F.R. §§ 204.5(k)(2) and (3)(i)(B). Thus, we find that the petitioner qualifies as a member of the professions with post-baccalaureate experience equivalent to an advanced degree.

Counsel claims that the petitioner also qualifies as an alien of exceptional ability. The record offers little support for that claim, but an additional finding of exceptional ability would be of no further benefit to the petitioner in any event.

The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel states that one of the petitioner's "major contributions" is Silicon Hill, described in a letter from [redacted], a certified public accountant with the firm of [redacted]

> I know [the petitioner] since 1994 when he became a client of our Firm. .
>
> [The petitioner] initiated a 2B$ national initiative for a hi-tech park that he named "Silicon Hill" and he offered me to collaborate with him in this regard. The I3A and "Silicon Hill" issues gave me and my partners the opportunity to learn about the outstanding creativity and management capabilities of [the petitioner]. For this reason our Firm also retained [the petitioner] as a management consultant. . . .

> I worked with [the petitioner] on the Master Plan for the "Silicon Hill" and I did so since I like the idea, trust the vision and consider it a wonderful opportunity. The "Silicon Hill" gained recognition from the Office of the President of the State of Israel, from the Office of the Prime Minister and other officials. Regretfully the economic slowdown as well as the political and security situation jeopardized the realization of the "Silicon Hill" project for the time being. Nevertheless, I admire the vision, talents and perseverance with which [the petitioner] acted to promote this national project. I also hope that [the petitioner's] vision receives new life in the future as the economy recovers.

The above letter indicates that the Silicon Hill project was never realized. Counsel does not explain how the petitioner's never-executed plans nevertheless amount to a "major contribution." Indeed, counsel never mentions the cancellation of the Silicon Hill project, a critical omission.

Counsel states: "the most significant contribution made by the petitioner in the field of information security technologies is the I3A technology. The petitioner is the sole inventor of I3A technology and presently the chief entrepreneur driving the rapid further development and implementation." "I3A" is short for "Intelligent Authentication, Administration and Authorization." Counsel discusses the petitioner's I3A technology:

> I3A is envisioned to let the parties agree on the security characteristics of their interactions and assist them to deploy the security frame they agree upon while complying with the law requirements.
>
> To achieve the above vision, I3A creates a new environment which the petitioner named True Public Key Infrastructure (TPKI). TPKI is a virtual network of all PKI on the Globe and covers all standards or formats of digital certificates. TPKI is not intended, and needs not, be trusted in the sense an existing certificate authority (CA) has to be. Yet TPKI is a most prominent trust enabler. In fact TPKI embraces all certificate authorities (CA) worldwide without requiring from [*sic*] any CA to take any special action. The use of TPKI is voluntary, so any user may decide at any time to join TPKI or to cease using it. In addition, TPKI is to enable secured operation over any platform and protocol, so it is not limited to Internet and Internet-like environments only. . . .
>
> Here are two examples, out of virtually an infinite number, on how I3A can dramatically contribute to cyber security:
>
> **1. Reducing credit card (CC) fraud for Business to Customer (B2C) transactions over the Internet**
>
> Under the framework of I3A technology, in the first place Customer and Business authenticate each other in a mutually agreed manner and electronically sign the deal. . . . But here comes the problem of assuring that the payment is done under legal terms with a valid CC. . . . Overall, the terms by which authentication and authorization are used are set

> dynamically on [a] case-by-case basis. The life span of such process is limited to minutes and to a single transaction. So even in the case Customer's CC details are stolen, none else [sic] may use the CC over the Internet because an impostor attempting to illegally use the CC must also possess the authentication means in order to impersonate the legitimate holder of the CC. This is not very likely to happen. That is the end of the most frequent fraudulent use of CC on business to customer (B2C) over the Internet. I3A enables the completion of such process in seconds or minutes with very low associated costs.
>
> In lack of I3A, the above secure process, if conducted, would cost significantly more and take at least hours if not days to complete. Due to this encumbrance, the present credit card transactions essentially bypass the necessary security measures to make the transaction acceptable to most people. As we all know, however, this also makes it easy for anyone to use a stolen credit card. Once I3A is deployed, much of the fear induced by theft of CC details shall be removed, which shall have a very good impact on global B2C.
>
> **2. Assuring privacy of authorizations**
>
> [redacted] is a golf player and a CIA agent. [redacted] has three e-cards that give him privileges. One is his membership e-card in his beloved golf club. The second is his CIA e-card that grants him the privilege to enter the CIA main building. The third one is an e-card that grants him the privilege to access the special operations room at CIA center in London and to use some facilities there. [redacted] keeps the e-cards in his e-wallet. So when [redacted] presents the e-wallet he actually presents all three e-cards. But [redacted] does not want the golf club to even know he is a CIA agent. . . .
>
> Under the present security system, [redacted] would either have to keep three different security IDs . . . or risk mixing all his different types of security information together. With I3A it is very easy to "envelope" any authorization so that it is visible only to those who are assumed [*sic*] to see it.

The record offers no indication that I3A technology has ever been implemented or tested on a large scale. Instead, counsel repeatedly refers to what is "expected" of I3A, what the technology "is about to offer," and what will occur at some future time "once security concerns and impediments existing at this time are wiped out through the capabilities of I3A." The petitioner holds a patent for his technology, which establishes the originality of his work but not its significance.

Counsel asserts that labor certification would not be appropriate because the labor certification process does not take "competitive personal merits" into account, and therefore the large number of minimally qualified workers would preclude the approval of a labor certification for the petitioner.

The petitioner submits several witness letters in support of the petition. [redacted] partner of the AIG-Orion venture capital fund in Israel, states:

> I3A is an important component of a possible solution [to computer security needs] and only one of many innovative ideas [the petitioner] has. . . .
>
> The importance of innovative and comprehensive solutions for security, particularly for authentication, authorization and administration, is clear to all by now. . . .
>
> Current solutions to this important technical field, such as Public Key Infrastructure (PKI), address only part of this problem. In particular, the problem of authentication is a difficult one and has no satisfactory solutions to date. What is required is a system capable of authenticating and verifying the identity of millions of users that communicate via a global network. [The petitioner's] solution provides a great step forward in responding to [the] above challenge. To my knowledge . . . I3A is the only technology to automatically administer authentication and authorization by allowing virtually unlimited flexibility in terms of the transactional parameters chosen by the related parties. . . .
>
> Based on the maturity of the I3A technology and [the petitioner's] exceptional talents both as an inventor and the entrepreneur, I believe the technology will be implemented successfully one way or another.

[redacted] *senior projects manager for* [redacted], met the petitioner in 1971 when they served together in the Israeli Air Force; both later worked together at Israel's Ministry of Defense and, still later, became neighbors. [redacted] lists the shortcomings of the existing PKI system currently in use, and states that the petitioner "was given a grant from the Office of the Chief Scientist of the Israeli Ministry of Industry and Trade. . . . It must be emphasized that the above grant is merit based, subject to the highest level of expert scrutiny and highly competitive. Only a limited number of grants of this type are given every year."

The record contains nothing from the awarding ministry to confirm these claims about the grant. The only documentation relating to the grant is a letter informing the petitioner that the "Tnufa Committee . . . decided to award you an additional grant of 52,000 NIS by the stated budget. This letter is for your information only and it is not an obligation to provide the said grant. An official approval and letter of obligation to be signed by you shall be sent to you in the near future."

Another witness who has "known [the petitioner] since the early seventies" is [redacted] *managing* director of Oracle Israel, who states:

> To my understanding I3A is the only method for solving the needs and harmonizing solutions for automatic administration of the critical authentication and authorization issues in electronic transactions. If successfully implemented, the technology will [a] have far-reaching impact in a society. . . .
>
> As the sole inventor of this important technology, [the petitioner] is expected to significantly impact the field of security in electronic transactions in the future.

[redacted] discusses the labor certification requirement, offering exactly the opposite argument from what counsel has stated: "the only person that can fit the job for leading the I3A activity would be [the petitioner]. In such case going through the process of labor certification would be a waste of time and resources while the final result is known from the very beginning." [redacted] thus argues that it is "a waste of time" to apply for labor certification in a situation where that application is likely to be approved. Because a denied application for labor certification is clearly not fruitful either for the alien or for the intending employer, [redacted] argument necessarily implies that the labor certification process itself is, inherently, "a waste of time" regardless of the outcome of that process.

The other witness who discusses I3A in the context of the petition is [redacted] who is the petitioner's collaborator and an accountant who states: "Since I am not a technology expert I am not able to fully evaluate the technical significance of I3A . . . my technical understanding of the I3A details is limited."

The petitioner submits copies of published articles he has written. Many of these articles are about business management or finance and have no discernible relevance to I3A. The petitioner has not shown that his business writings have been especially influential. One article focuses on the issue of computer security, but this is not surprising given that the article appeared in the *Computer Security Journal*. This article focuses on how to provide effective computer security training.

The petitioner also shows that he wrote a paper that was accepted for presentation at a European Institute for Research and Strategic Studies in Telecommunications (EURESCOM) conference in late 2003 (the conference had not yet taken place at the time of filing). To establish the significance of EURESCOM, the petitioner submits a printout from http://www.google.com showing that a search for the word "EURESCOM" yielded 121,000 "hits." The issue in this proceeding is not EURESCOM's reputation, but rather the importance of the petitioner's work. There is no comparable evidence that the petitioner, I3A, or the petitioner's other work has attracted significant attention or discussion.

Counsel cites "[a] collection of 14 letters from the industrial or academic entities showing interest in the I3A technology invented by the petitioner." These letters and electronic mail messages show that the petitioner initiated contact with various companies in Israel, Germany, Poland, and elsewhere. The companies do express interest in participating in joint projects, or at least learning more about the petitioner's work; but this does not establish that the petitioner's work is so significant that it merits a national interest waiver. One letter refers to "background documentation (e.g. Provision for Implementation of Integrated Projects...)," indicating that participation in projects of this kind is sufficiently common to warrant "background information" to establish procedures for doing so. Several of the letters state that the petitioner's proposal is "interesting" and that the companies are interested in receiving further information; these letters appear to be little more than formalities, expressing no commitment to participate in future projects.

The director instructed the petitioner to submit additional evidence to establish the significance of his work. In response, the petitioner submits background information about computer security, arguments from counsel, and new witness letters.

[redacted] a technology consultant for the Revere Group in Deerfield, Illinois, states:

> I have reviewed [the petitioner's] ideas on I3A and found them to be truly groundbreaking. During my research efforts during my review of PKI Assessment materials, I found that many professionals in the field were lamenting the fact that the PKI situation was not good, and until someone came up with a way to correct the situation, security would not be as optimal in US businesses as it could be. What I have learned from [the petitioner] is that his unique ideas on I3A would go a long way to inject a well-needed boost to the space where research is being done on this problem.
>
> One of the most critical and pervasive problems with the existing PKI based information security technology is the complexity of numerous PKI standards on one hand, and paradoxically a lack of freedom in individual choices for parties of information exchange on the other. . . .
>
> [The petitioner's] I3A . . . technology strikes at the core of the above problem. . .
>
> Having studied information security extensively, I believe [the petitioner's] I3A technology is revolutionary in many aspects and has a high potential to solve some of the most critical problems in the existing technology. The I3A technology has been solely invented by [the petitioner] and the invention has moved far beyond the stage of inception. . . . [The petitioner] now intends to implement this technology in the US. . . . [B]ecoming the initiator and an early adapter of this revolutionary new technology would give the US a definite advantage over other nations.

The last two sentences quoted above appear to confirm that I3A technology has not been implemented outside the United States; otherwise, the United States would not be "the initiator" of I3A, and would not have an advantage over other nations already using it. Thus, the record shows that the petitioner has attempted to interest partners in several different countries, but so far the technology has not reached implementation in any of those countries.

[redacted], an attorney and executive director of the American Jewish Committee, states: "Among the numerous proposals I have come across in recent years, [the petitioner's] proposal based on the I3A technology, which he has solely invented, belongs to the very best."

Counsel argues that the petitioner intends to establish his own company, which is not a situation suitable for labor certification. At the same time, a declaration of intent to start a company is not sufficient grounds for a waiver. Counsel adds that, as the sole inventor of I3A technology, the petitioner is the only individual in a position to develop and exploit it. At this point, it becomes necessary to examine the impact that the petitioner's work has actually had. Without some demonstrable track record that goes beyond competence and success in his field, assertions about the future impact that his work will have amounts to little more than speculation. The track record established by the petitioner's submissions to the record of proceeding amounts to various consulting jobs, training seminars, articles about training, and the abandoned Silicon Hill project.

Counsel contends: "The petitioner's abilities and qualifications should be compared to that of IT workers holding an advanced degree, rather than that of technology offices [*sic*] and CEOs." Considering the petitioner's expressed intention to become a CEO of his own company, we do not find counsel's argument persuasive.

Counsel again emphasizes the petitioner's role as initiator of the Silicon Hill project, and counsel again fails to acknowledge that the project was never executed, as proven by the very documents that counsel cites. We keep this profoundly important omission in mind when considering counsel's claims regarding the "sweeping importance" of I3A.

The director denied the petition, acknowledging the intrinsic merit and potential national scope of the I3A project, but finding "there is little evidence" to justify a waiver. On appeal, the petitioner submits a brief from counsel and several new exhibits.

Some of the newly submitted documents concern the Tnufa grant discussed earlier in the decision. These documents describe the process by which grant applications are considered, but they do not show that the awarding of a particular grant is a rare or prestigious event. They show only that, like most if not all grant-awarding organizations, the committee holds applications to certain standards.

Another document indicates that the petitioner served on a graduate student's thesis defense committee in March 2005, several years after the petition's filing date. This speaks to the petitioner's expertise in information technology, which the director did not question in the denial decision. The remaining evidence confirms facts already established, that the petitioner is a published author and successful entrepreneur. None of the new evidence reflects any further progress on the I3A project, which forms the cornerstone of the petitioner's national interest claim.

Counsel states that there is "nothing wrong" with the petitioner's desire to run his own company and thereby control I3A technology. The director did not indicate that this desire was "wrong"; but the director also did not find that this desire is a strong qualifying factor for a waiver. It shows how it is in *the petitioner's* interest to immigrate to the United States, which does not necessarily translate to the *national* interest. The waiver exists to benefit the nation, not for the convenience of aliens who would prefer not to seek employment with an existing U.S. corporation even for the few years that it would take to obtain permanent resident status. (No matter how the petitioner obtained such status, he would be free to start his own business at that point.)

Counsel acknowledges that "a petition for a NIW cannot succeed based on mere speculations, but rather must be based on the alien's past record that justifies projections of future benefit to the National Interest." Counsel goes on to claim that the petitioner "clearly presents such a case, in which Appellant-Petitioner has an extraordinary past record." To show this past record, counsel cites the previously submitted letters and states that they are persuasive letters from credible witnesses. Some of those witnesses claim no expertise in the petitioner's area of endeavor, and all of the letters are necessarily speculative about the future impact of a not-yet-implemented technology.

Counsel, for the third time, states that the petitioner "initiated an Israeli national project named 'Silicon Hill' of a $2 billion magnitude," and refers to the petitioner's "high impact and prominent activities" relating to the Silicon Hill project. And for the third time, counsel fails to mention that the project never came to fruition. Counsel quotes from [redacted] letter containing that crucial information, but stops before the relevant passage. Counsel has never explained the "high impact" of a project that apparently only ever existed on paper.

Overall, while the petitioner has clearly devoted considerable effort to his project, and it has advanced to a stage where he has obtained patents in the United States and elsewhere, there is no evidence that the I3A technology is actually in use on any significant scale. Therefore, we cannot find that these still-preliminary plans demonstrate a track record of achievement. Like the abandoned Silicon Hill project, the early stage of the I3A project says more about the petitioner's ambition than about actual, measurable achievement. We are not persuaded by the argument that the petitioner must become a permanent resident before he will even begin to implement his still-embryonic project in the United States. The justification offered for the waiver is highly speculative, and does not rest on any clear record of fully realized past achievements by the petitioner.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.